

Senate File 325 - Introduced

SENATE FILE 325
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1121)

A BILL FOR

1 An Act relating to the boards of directors of public
2 corporations, and including effective date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 490.140, Code 2011, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 21A. "*Public corporation*" means a
4 corporation that has a class of voting stock that is listed on
5 a national securities exchange or held of record by more than
6 two thousand shareholders.

7 Sec. 2. Section 490.702, subsection 5, unnumbered paragraph
8 1, Code 2011, is amended to read as follows:

9 Notwithstanding subsections 1 through 4, a public
10 ~~corporation which has a class of voting stock that is listed on~~
11 ~~a national securities exchange, authorized for quotation on the~~
12 ~~national association of securities dealers automated quotations~~
13 ~~— national market system, or held of record by more than two~~
14 ~~thousand shareholders,~~ is required to hold a special meeting
15 only upon the occurrence of either of the following:

16 Sec. 3. Section 490.803, subsections 2 and 3, Code 2011, are
17 amended to read as follows:

18 2. a. The number of directors may be increased or decreased
19 from time to time by amendment to, or in the manner provided
20 in, the articles of incorporation or the bylaws.

21 b. Notwithstanding paragraph "a", the number of directors of
22 a public corporation subject to section 490.806A, subsection 1,
23 shall be increased or decreased only by the affirmative vote of
24 a majority of its board of directors.

25 3. Directors are elected at the first annual shareholders'
26 meeting and at each annual meeting thereafter unless their
27 terms are staggered under section 490.806 or 490.806A.

28 Sec. 4. Section 490.805, subsections 2 and 4, Code 2011, are
29 amended to read as follows:

30 2. The terms of all other directors expire at the next
31 annual shareholders' meeting following their election unless
32 their terms are staggered under section 490.806 or 490.806A.

33 4. The term of a director elected to fill a vacancy expires
34 at the next shareholders' meeting at which directors are
35 elected, except as provided in section 490.806A.

1 Sec. 5. Section 490.806, Code 2011, is amended to read as
2 follows:

3 **490.806 Staggered terms for directors.**

4 ~~The~~ Except as otherwise provided in section 490.806A,
5 a corporation's articles of incorporation may provide for
6 staggering the terms of its directors by dividing the total
7 number of directors into two or three groups, with each group
8 containing one-half or one-third of the total, as near as may
9 be. In that event, the terms of directors in the first group
10 expire at the first annual shareholders' meeting after their
11 election, the terms of the second group expire at the second
12 annual shareholders' meeting after their election, and the
13 terms of the third group, if any, expire at the third annual
14 shareholders' meeting after their election. At each annual
15 shareholders' meeting held thereafter, directors shall be
16 chosen for a term of two years or three years, as the case may
17 be, to succeed those whose terms expire.

18 Sec. 6. NEW SECTION. **490.806A Public corporations —**
19 **staggered terms.**

20 1. Except as provided in subsection 2, and notwithstanding
21 anything to the contrary in the articles of incorporation or
22 bylaws of a public corporation, the terms of directors of a
23 public corporation shall be staggered by dividing the number
24 of directors into three groups, as nearly equal in number as
25 possible. The first group shall be referred to as "class I
26 directors", the second group shall be referred to as "class II
27 directors", and the third group shall be referred to as "class
28 III directors".

29 a. On or before the date on which a public corporation first
30 convenes an annual shareholders' meeting following the time
31 the public corporation becomes subject to this subsection, the
32 board of directors of the public corporation shall by majority
33 vote designate from among its members directors to serve as
34 class I directors, class II directors, and class III directors.

35 b. The terms of directors serving in office on the date that

1 the public corporation becomes subject to this subsection shall
2 be as follows:

3 (1) Class I directors shall continue in office until the
4 first annual shareholders' meeting following the date that the
5 public corporation becomes subject to this subsection, and
6 until their successors are elected. The shareholders' meeting
7 shall be conducted not less than eleven months following the
8 last annual shareholders' meeting conducted before the public
9 corporation became subject to this subsection.

10 (2) Class II directors shall continue in office until one
11 year following the first annual shareholders' meeting described
12 in subparagraph (1), and until their successors are elected.

13 (3) Class III directors shall continue in office until
14 two years following the first annual shareholders' meeting
15 described in subparagraph (1), and until their successors are
16 elected.

17 *c.* At each annual shareholders' meeting of a public
18 corporation subject to this subsection, the successors to the
19 class of directors whose term expires at that meeting shall be
20 elected to hold office for a term of three years following such
21 meeting and until their successors are elected.

22 *d.* The board of directors of a public corporation subject
23 to this subsection shall adopt an amendment to its articles of
24 incorporation as provided in section 490.1005A.

25 *e.* Notwithstanding this subsection, the articles of
26 incorporation of a public corporation may confer upon the
27 holders of preferred shares the right to elect one or more
28 directors pursuant to section 490.804, who shall serve for such
29 term, and have such voting powers, as shall be stated in the
30 articles of incorporation.

31 2. Every public corporation shall be subject to subsection
32 1, unless it is exempt pursuant to this subsection.

33 *a.* (1) (a) In order for a public corporation in existence
34 on the effective date of this Act to be exempt from subsection
35 1, its board of directors must adopt a resolution or take

1 action under section 490.821 expressly making an election to be
2 exempt from the provisions of subsection 1. Such resolution
3 or action must be adopted or taken within forty days after the
4 effective date of this Act.

5 (b) In order for a corporation which becomes a public
6 corporation after the effective date of this Act to be
7 exempt from subsection 1, its board of directors must adopt
8 a resolution or take action under section 490.821 expressly
9 making an election to be exempt from the provisions of
10 subsection 1. Such resolution or action must be adopted or
11 taken within forty days after the date when the corporation
12 became a public corporation.

13 (2) Upon adopting the resolution or taking board action
14 under section 490.821, the public corporation is no longer
15 subject to subsection 1, effective immediately unless otherwise
16 provided for in the resolution or by the board action.

17 b. If on the effective date of this Act the articles of
18 incorporation of the public corporation already provide for
19 staggering the terms of its directors under section 490.806,
20 the public corporation shall be exempt from the provisions of
21 subsection 1. In such event, no further corporate action is
22 required, and the public corporation is not required to amend
23 or modify any provision of its articles of incorporation or
24 bylaws in order to be exempt from subsection 1.

25 3. A public corporation that is exempt pursuant to
26 subsection 2 may elect to become subject to subsection 1 at any
27 time. To do so, its board of directors must adopt a resolution
28 or take action under section 490.821 expressly making the
29 election. On that date the corporation shall become subject to
30 subsection 1, unless another date is expressly provided in the
31 resolution or by the board action.

32 Sec. 7. Section 490.808, subsection 1, Code 2011, is amended
33 to read as follows:

34 1. a. The Except as provided in paragraph "b", the
35 shareholders may remove one or more directors with or without

1 cause unless the articles of incorporation provide that
2 directors may be removed only for cause.

3 b. Notwithstanding its articles of incorporation or bylaws,
4 the shareholders of a public corporation subject to section
5 490.806A, subsection 1, shall not remove a director without
6 cause.

7 Sec. 8. Section 490.810, Code 2011, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 1A. For a public corporation subject
10 to section 490.806A, subsection 1, a vacancy on the board of
11 directors, including but not limited to a vacancy resulting
12 from an increase in the number of directors, shall be filled
13 solely by the affirmative vote of a majority of the remaining
14 directors, even though less than a quorum of the board.

15 Sec. 9. NEW SECTION. 490.1005A **Public corporation —**
16 **amendment by board of directors.**

17 1. The board of directors of a public corporation subject to
18 section 490.806A, subsection 1, shall adopt an amendment to its
19 articles of incorporation which includes all of the following:

20 a. A statement that the public corporation is subject to
21 section 490.806A, subsection 1.

22 b. Any necessary changes to the articles of incorporation
23 required to implement the requirements of section 490.806A,
24 subsection 1, including by staggering the terms of the board of
25 directors as described in that subsection.

26 2. Any amendment to the articles of incorporation as
27 provided in subsection 1 of this section shall be made without
28 shareholder approval.

29 3. Any amendment to the articles of incorporation as
30 provided in subsection 1 shall not be subsequently amended,
31 modified, superseded, or rescinded in a manner that is
32 inconsistent with the requirements of section 490.806A,
33 subsection 1.

34 Sec. 10. **EFFECTIVE UPON ENACTMENT.** This Act, being deemed
35 of immediate importance, takes effect upon enactment.

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EXPLANATION

GENERAL. This bill makes special provision for the management of a public corporation by its board of directors.

PUBLIC CORPORATION DEFINED. The bill defines a public corporation as either (1) having a class of voting stock listed on a national trading exchange or (2) comprised of more than 2,000 shareholders. It deletes a provision referencing the national association of securities dealers automated quotations - national market system to reflect that such system is now a national securities exchange.

STAGGERED TERMS FOR BOARD OF DIRECTORS. Currently, the terms of directors for all corporations are for one year (Code section 490.805), unless the terms are staggered by dividing the total number of directors into two groups with the directors serving either one or two years depending upon the group or by dividing directors into three groups with the directors serving one, two, or three years depending upon the group (Code section 490.806). The bill requires that all public corporations divide their number of directors into three equal groups (referred to as "classes") serving staggered three-year terms as designated by the current board. The staggered term requirements apply to directors elected by the public corporation's holders of common shares and not to directors elected by holders of preferred shares (generally a class of ownership enjoying a higher status when claiming assets or earnings).

EXEMPTIONS. A public corporation may be exempted from the new staggered term requirements, regardless of whether it is subject to the one-term requirements in Code section 490.805 or the staggered term requirements in Code section 490.806. The exemption applies only if its board makes an election to opt out of the new staggered term requirements in Code section 490.806A by a date certain. The opt-out provision applies to a public corporation that existed on the bill's effective date or existed at any time as a private corporation and later became a

1 public corporation after the bill's effective date. A public
2 corporation is automatically exempted from the new staggered
3 term requirements if it is already subject to the staggered
4 term requirements in Code section 490.806. It is not required
5 to amend its articles of incorporation or bylaws.

6 OPT-IN REQUIREMENTS. For a public corporation that is
7 exempt from the new staggered term requirements either because
8 of an opt-out election or automatically, its board may at
9 any time elect to become subject to the new staggered term
10 requirements in Code section 490.806A.

11 LIMITATION ON FUTURE AMENDMENTS TO ARTICLES OF
12 INCORPORATION. A public corporation that is subject to the
13 new staggered term requirements in Code section 490.806A must
14 amend its articles of incorporation. The amendment cannot be
15 revised in the future in a manner that is inconsistent with the
16 requirements.

17 OTHER PROVISIONS. Once a public corporation becomes subject
18 to the staggered term requirements in Code section 490.806A,
19 its directors cannot be removed by the shareholders without
20 cause. A vacancy on the board is to be filled only by the
21 affirmative vote of a majority of the remaining directors.

22 EFFECTIVE DATE. The bill takes effect upon enactment.